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UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

LAFAYETTE DIVISION

JULIO REBOLLO

CIVIL ACTION NO. 04-2561

VS.

JUDGE MELANÇON

TOM RIDGE, ET AL.

MAGISTRATE JUDGE HILL

JUDGMENT

Before the court is the "Reply to the Government's Return to Petition and Memorandum of Law of Points and Authority" filed on April 28, 2005 on behalf of petitioner Julio Castro-Rebollo in connection with his petition for writ of *habeas corpus* filed on December 22, 2004 pursuant to 28 U.S.C. §2241. [rec. doc. 9].

In the instant federal *habeas corpus* petition, Rebollo alleged that his continued and indefinite detention by respondent Department of Homeland Security/Bureau of Immigration Customs Enforcement (DHS/ICE) violates principles set forth by the United States Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001) and *Clark v. Martinez*, 125 S.Ct. 716 (2005).

The government has filed a response to the petition wherein it contends that petitioner was released from the custody of the Department of Homeland Security/United States Immigration and Customs Enforcement (DHS/USICE) to the custody of the United States Marshal's Service on August 9, 2004, pending the federal criminal trial of Gilbert

Self¹, in which he is to provide testimony.² [rec. doc. 8].

By this pleading, Rebollo concedes that at the present time, he is not being held in the custody of the DHS/ICE, and that his present custody is not dependant on the final order of removal issued against him. Therefore, Rebollo requests that the instant federal *habeas corpus* petition be dismissed without prejudice.

Given the relief sought by the instant pleading, the court construes the pleading as a Motion to Dismiss to this *habeas corpus* action without prejudice. [rec. doc. 10]. No opposition to the Motion has been filed by the government, and the delay allowed for the filing of an opposition has expired.³

Therefore, considering petitioner's Motion;

IT IS ORDERED that the "Reply" [rec. doc. 9] which the court construes as a Motion to Dismiss is **GRANTED**. Accordingly, **IT IS ORDERED** that the instant petition for writ of *habeas corpus* be **DENIED AND DISMISSED WITHOUT PREJUDICE**.

THUS DONE AND SIGNED in Chambers at Lafayette, Louisiana, this 15th day of July, 2005.



TUCKER L. MELANCON
UNITED STATES DISTRICT JUDGE

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¹See *United States v. Gilbert Self*, 04-60031 (W.D.La.).

²See 18 U.S.C. § 3621(d).

³U.L.L.R. 7.5W requires that written opposition to a motion be filed within fifteen (15) days after service of the motion.